

Subpart 225.10—Additional Foreign Acquisition Regulations

225.1070 Clause deviations in overseas contracts.

See 201.403(2) for approval authority for clause deviations in overseas contracts with governments of North Atlantic Treaty Organization (NATO) countries or other allies or with United Nations or NATO organizations.

[65 FR 19856, Apr. 13, 2000]

Subpart 225.11—Solicitation Provisions and Contract Clauses

SOURCE: 68 FR 16526, Mar. 31, 2003, unless otherwise noted.

225.1100 Scope of subpart.

This subpart prescribes the clauses that implement Subparts 225.1 through 225.10. The clauses that implement Subparts 225.70 through 225.75 are prescribed within those subparts.

225.1101 Acquisition of supplies.

(1)(i) Use the provision at 252.225–7000, Buy American Act—Balance of Payments Program Certificate, instead of the provision at FAR 52.225–2, Buy American Certificate. Use the provision in any solicitation, including solicitations using FAR part 12 procedures for the acquisition of commercial items, that includes the clause at 252.225–7001, Buy American Act and Balance of Payments Program. If the solicitation includes the provision at FAR 52.204–7, do not separately list the provision 252.225–7000 in the solicitation.

(ii) Use the provision with its Alternate I in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, when the acquisition is of end products listed in 225.401–70 in support of operations in Afghanistan.

(2)(i) Use the clause at 252.225–7001, Buy American Act and Balance of Payments Program, instead of the clause at FAR 52.225–1, Buy American—Supplies, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, unless—

(A) All line items will be acquired from a particular source or sources under the authority of FAR 6.302–3;

(B) All line items must be domestic or qualifying country end products in accordance with Subpart 225.70. (However, the clause may still be required if Subpart 225.70 requires manufacture of the end product in the United States or in the United States or Canada, without a corresponding requirement for use of domestic components);

(C) An exception to the Buy American statute or Balance of Payments Program applies (see FAR 25.103, 225.103, and 225.7501);

(D) One or both of the following clauses will apply to all line items in the contract:

(1) 252.225–7021, Trade Agreements.

(2) 252.225–7036, Buy American—Free Trade Agreements—Balance of Payments Program; or

(E) All line items will be acquired using a procedure specified in 225.7703–1(a).

(ii) Use the clause with its Alternate I in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, when the acquisition is of end products listed in 225.401–70 in support of operations in Afghanistan.

(3) Use the clause at 252.225–7002, Qualifying Country Sources as Subcontractors, in solicitations and contracts that include one of the following clauses:

(i) 252.225–7001, Buy American and Balance of Payments Program.

(ii) 252.225–7021, Trade Agreements.

(iii) 252.225–7036, Buy American—Free Trade Agreements—Balance of Payments Program.

(4) Use the clause at 252.225–7013, Duty-Free Entry, instead of the clause at FAR 52.225–8. Do not use the clause for acquisitions of supplies that will not enter the customs territory of the United States.

(5)(i) Use the provision at 252.225–7020, Trade Agreements Certificate, instead of the provision at FAR 52.225–6, Trade Agreements Certificate, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, that include

the clause at 252.225-7021, Trade Agreements. If the solicitation includes the provision at FAR 52.204-7, do not separately list the provision 252.225-7020 in the solicitation.

(ii) Use the provision with its Alternate I in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, when the acquisition is of end products in support of operations in Afghanistan.

(6)(i) Use the clause at 252.225-7021, Trade Agreements, instead of the clause at FAR 52.225-5, Trade Agreements, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, if the World Trade Organization Government Procurement Agreement applies.

(ii) Use the clause with its Alternate II in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, when the acquisition is of end products in support of operations in Afghanistan.

(iii) Do not use the clause if—

(A) Purchase from foreign sources is restricted, unless the contracting officer anticipates a waiver of the restriction; or

(B) The clause at 252.225-7026, Acquisition Restricted to Products or Services from Afghanistan, is included in the solicitation and contract.

(iv) The acquisition of eligible and noneligible products under the same contract may result in the application of trade agreements to only some of the items acquired. In such case, indicate in the Schedule those items covered by the Trade Agreements clause.

(7) Use the provision at 252.225-7032, Waiver of United Kingdom Levies—Evaluation of Offers, in solicitations if a U.K. firm is expected to—

(i) Submit an offer; or

(ii) Receive a subcontract exceeding \$1 million.

(8) Use the clause at 252.225-7033, Waiver of United Kingdom Levies, in solicitations and contracts if a U.K. firm is expected to—

(i) Submit an offer; or

(ii) Receive a subcontract exceeding \$1 million.

(9)(i) Use the provision at 252.225-7035, Buy American—Free Trade Agreements—Balance of Payments Program Certificate, instead of the provision at FAR 52.225-4, Buy American—Free Trade Agreements—Israeli Trade Act Certificate, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, that include the clause at 252.225-7036, Buy American—Free Trade Agreements—Balance of Payments Program. If the solicitation includes the provision at FAR 52.204-7, do not separately list the provision 252.225-7035 in the solicitation.

(ii) Use the provision with its Alternate I in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, when the clause at 252.225-7036 is used with its Alternate I.

(iii) Use the provision with its Alternate II in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, when the clause at 252.225-7036 is used with its Alternate II.

(iv) Use the provision with its Alternate III in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, when the clause at 252.225-7036 is used with its Alternate III.

(v) Use the provision with its Alternate IV in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, when the clause at 252.225-7036 is used with its Alternate IV.

(vi) Use the provision with its Alternate V in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, when the clause at 252.225-7036 is used with its Alternate V.

(10)(i) Except as provided in paragraph (10)(ii) of this section, use the clause at 252.225-7036, Buy American—Free Trade Agreements—Balance of Payments Program, instead of the clause at FAR 52.225-3, Buy American—Free Trade Agreements—Israeli Trade Act, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, for the items listed at 225.401-70, when the estimated value equals or exceeds

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\$25,000, but is less than \$204,000, and a Free Trade Agreement applies to the acquisition.

(A) Use the basic clause in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, when the estimated value equals or exceeds \$79,507, except if the acquisition is of end products in support of operations in Afghanistan, use with its Alternate II.

(B) Use the clause with its Alternate I in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, when the estimated value equals or exceeds \$25,000 but is less than \$79,507, except if the acquisition is of end products in support of operations in Afghanistan, use with its Alternate III. .

(C) Use the clause with its Alternate IV in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, when the estimated value equals or exceeds \$79,507 but is less than \$100,000, except if the acquisition is of end products in support of operations in Afghanistan, use with its Alternate V.

(ii) Do not use the clause if—

(A) Purchase from foreign sources is restricted (see 225.401(a)(2)), unless the contracting officer anticipates a waiver of the restriction;

(B) Acquiring information technology that is a commercial item, using fiscal year 2004 or subsequent funds (Section 535 of Division F of the Consolidated Appropriations Act, 2004 (Pub. L. 108-199), and the same provision in subsequent appropriations acts); or

(C) Using a procedure specified in 225.7703-1(a).

(iii) The acquisition of eligible and noneligible products under the same contract may result in the application of a Free Trade Agreement to only some of the items acquired. In such case, indicate in the Schedule those items covered by the Buy American

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—Free Trade Agreements—Balance of Payments Program clause.

[75 FR 81916, Dec. 29, 2010, as amended at 77 FR 4630, Jan. 30, 2012; 77 FR 30357, May 22, 2012; 77 FR 35880, June 15, 2012; 78 FR 37986, June 25, 2013; 78 FR 40043, July 3, 2013; 78 FR 59857, Sept. 30, 2013; 78 FR 79621, Dec. 31, 2013; 79 FR 3520, Jan. 22, 2014; 79 FR 11342, Feb. 28, 2014]

225.1103 Other provisions and clauses.

(1) Unless the contracting officer knows that the prospective contractor is not a domestic concern, use the clause at 252.225-7005, Identification of Expenditures in the United States, in solicitations and contracts that—

(i) Exceed the simplified acquisition threshold; and

(ii) Are for the acquisition of—

(A) Supplies for use outside the United States;

(B) Construction to be performed outside the United States; or

(C) Services to be performed primarily outside the United States.

(2) Use the clause at 252.225-7041, Correspondence in English, in solicitations and contracts when contract performance will be wholly or in part in a foreign country.

(3) Use the provision at 252.225-7042, Authorization to Perform, in solicitations when contract performance will be wholly or in part in a foreign country. If the solicitation includes the provision at FAR 52.204-7, do not separately list the provision 252.225-7042 in the solicitation.

(4) Unless an exception in 225.770-3 applies, use the clause at 252.225-7007, Prohibition on Acquisition of United States Munitions List Items from Communist Chinese Military Companies, in solicitations and contracts involving the delivery of items covered by the United States Munitions List.

[68 FR 16526, Mar. 31, 2003, as amended at 71 FR 39006, July 11, 2006; 71 FR 53046, Sept. 8, 2006; 78 FR 37987, June 25, 2013; 78 FR 40043, July 3, 2013]